No. 80-1535

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Supreme Court of the United States

October Term, 1980

DOROTHY J. MORGAN, Individually and GEORGE J. MORGAN and DOROTHY J. MORGAN, as Administrators of the Estate of THOMAS EDWIN MORGAN, Deceased,

Petitioners,

vs.

GLOBAL COMMUNICATIONS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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QUESTIONS PRESENTED

1. Is a parent in a wrongful death action brought under the general maritime law precluded by the Death on the High Seas Act (DOHSA), 46 U.S.C. §761 *et seq.*, from recovering damages for loss of society of a son where it is found that the negligence of the defendant included wrongful acts, neglect or default which did not occur on the high seas?

2. Is a parent who witnessed the negligent infliction of injuries upon her son precluded by the Death on the High Seas Act (DOHSA) 46 U.S.C. §761 *et seq.*, from recovering damages for the resulting mental anguish?

3. Does an award of prejudgment interest in a death action brought under the general maritime law lie within the discretion of the court?

PARTIES

The parties before the United States Court of Appeals for the Second Circuit were the petitioners and Global Communications, Inc.

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No.

In The

Supreme Court of the United States

October Term, 1980

DOROTHY J. MORGAN, Individually and GEORGE J. MORGAN and DOROTHY J. MORGAN, as Administrators of the Estate of THOMAS EDWIN MORGAN, Deceased,

Petitioners,

vs.

GLOBAL COMMUNICATIONS, INC.,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petitioners Dorothy J. Morgan, Individually and George J. Morgan and Dorothy J. Morgan, as Administrators of the Estate of Thomas Edwin Morgan, Deceased, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit entered on December 16, 1980.

OPINION BELOW

The United States Court of Appeals for the Second Circuit did not render a formal opinion. A copy of the statement of the Court of Appeals dated October 31, 1980 is appended (1a).

JURISDICTION

The judgment sought to be reviewed was entered December 16, 1980. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Death on the High Seas Act are as follows:

> "Whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, the personal representative of the decedent may maintain a suit for damages in the district courts of the United States, in admiralty, for the exclusive benefit of the decedent's wife, husband, parent, child, or dependent relative against the vessel, person, or corporation which would have been liable if death had not ensued." 46 U.S.C. §761.

> "The recovery in such suit shall be a fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought and shall be apportioned among

them by the court in proportion to the loss they may severally have suffered by reason of the death of the person by whose representative the suit is brought." 46 U.S.C. §762.

STATEMENT OF THE CASE

In early November 1976, in Norfolk, Virginia, the petitioner Dorothy Jean Morgan and her son, Thomas, boarded a vessel owned by the respondent, an international news agency, which kept the yacht for the entertainment of its own officers and clients. The yacht which was bound for Florida was a wooden houseboat built in 1930 and over 100 feet in length. It was outfitted with an elevator, splendid staterooms and high picture windows. The respondent purchased the boat in 1975.

The respondent hired a captain to supervise the refitting and to take charge of the vessel. The captain had some limited experience on the Great Lakes and fresh water rivers, and some experience in supervising the repair of smaller vessels. He had been in the ocean on two prior coastwise voyages when for relatively short periods he left the inland waterway and went outside. He was not licensed by the Coast Guard. The four crew members had no experience in the ocean and limited fresh water experience with small pleasure craft. Complaints were made to the respondent during the refitting of the vessel about the inadequacy of the access to the engine room. The only access to the engine room was through a sliding hatch located on the open foredeck. Nothing was done to correct this design.

On November 9 at Moorehead City the vessel left the inland waterway and went into the ocean.

As the vessel proceeded south the velocity of the wind and the height of the seas increased. At 5:00 p.m. on November 9,

while it was still light, the velocity of the wind was substantially greater than was forecast. The captain decided to proceed despite the approach of darkness and the fact that the efficiency of the crew, particularly in attending to the engine room through the open foreward deck hatch would be impaired during darkness and any emergency.

By 9:00 p.m., November 9, the seas and wind had risen to the point of serious danger. The hull was taking on water. Two of the pumps were operating, but the third pump, driven by gasoline, could not be started. The captain reported difficulties to the Coast Guard but did not request assistance in taking off passengers or in having a vessel stand by or in supplying additional pumps.

At approximately 10:00 to 11:00 p.m. the captain requested standby assistance from the Coast Guard.

At approximately 1:00 a.m., November 10, the vessel, having continued to take sea water, had lost so much freeboard that waves splintered the foreward hatch leading to the engine room. The ship began to fill rapidly with water. The captain ordered the ship abandoned and broadcast a Mayday notice to the Coast Guard. The passengers were assisted to the starboard side and ordered to place one leg over the railing. The captain went to the top deck with a member of the crew and released what was apparently the only life raft available on the ship — a life raft which was designed for less persons than were aboard the vessel.

The crew and passengers were swept off the ship into the sea by an incoming wave. Thomas Morgan was never seen alive again. Mrs. Morgan swam to the life raft and was rescued by a Coast Guard helicopter together with the crew and another passenger.

The wind and sea conditions encountered by the Lady Margaret the night of November 9 and 10 were to be expected. At least 30 percent of the time in November, winds and seas almost as high as those reported by the Coast Guard, prevail in the area where the Lady Margaret sank (opinion of trial judge dictated while jury was deliberating).

The trial judge, Jack Weinstein, submitted two sets of interrogatories to the jury. In answer to the court's first set of interrogatories the jury decided:

1. The respondent was negligent;

2. Thomas Morgan's death was caused by the wrongful act, neglect or default of respondent;

3. The pecuniary loss sustained by Mr. and Mrs. Morgan by reason of the death of their son amounted to $200,000;

4. Mr. and Mrs. Morgan were entitled to $50,000 because of the pain and suffering experienced by their son during the course of the foundering of the vessel;

5. The damages of Mrs. Morgan caused by the respondent's negligence amounted to $250,000.

After the jurors answered the first set of interrogatories, Judge Weinstein gave them a second set of interrogatories which they answered as follows:

1. The respondent was negligent in the purchase, overhaul and maintenance of the yacht and in the selection and supervision of the captain and crew and this negligence was a proximate cause of Thomas Morgan's death;

2. The respondent or the captain or the crew were negligent in the operation of the vessel at sea and this negligence was a proximate cause of Thomas Morgan's death;

3. Mr. and Mrs. Morgan suffered damages in the amount of $200,000 because of the loss of society and affection of their son due to his death;

4. Mrs. Morgan suffered damages in the amount of $50,000 as a result of mental pain due to her presence during the drowning of her son;

5. The petitioners were not entitled to an award of punitive damages.

Judge Weinstein granted the respondent's motion to set aside the jury's award for loss of the decedent's society and the award to Mrs. Morgan for mental anguish by reason of her presence during her son's drowning, and he denied the motion of petitioners for an order to include interest on the amount awarded petitioners for their pecuniary loss.

The basis for federal jurisdiction in the court of first instance was the diversity of citizenship of the parties. The petitioners are residents of New York State. The respondent is a Michigan corporation.

All parties appealed from the District Court's judgment. The Court of Appeals for the Second Circuit affirmed the determination of the trial judge setting aside the award to the petitioners for the loss of their son's society and affection and the award to the petitioner Dorothy J. Morgan for the mental pain which she sustained by reason of her presence during the drowning of her son on the ground that this Court had limited recovery under the Death on the High Seas Act, 46 U.S.C. §761,

et seq., to pecuniary loss. The Court of Appeals assumed that the district judge had discretion to grant prejudgment interest on the pecuniary award and held that denying such interest was not an abuse of discretion.

The Court of Appeals would have reversed the judgment of the District Court and ordered a new trial on the issue of damages with regard to the awards to the petitioners for pecuniary loss and to the petitioner Dorothy J. Morgan for pain and suffering, but it gave the petitioners an opportunity to file a remittitur on these awards. Remittiturs were filed resulting in the affirmance of the judgment of the District Court, less the amount remitted.

REASONS FOR GRANTING THE WRIT

A review on writ of certiorari is sought for the following reasons:

1. The Court of Appeals for the Second Circuit has decided two important questions of federal law which have not been but should be settled by this Court:

(a) Is the holding of this Court in *Mobil Oil v. Higginbotham*, 436 U.S. 618, to be applied to a death action brought under the general maritime law where the negligence of the defendant occurred on land or in territorial waters as well as on the high seas.*

---

* A subsidiary question, does an action for wrongful death which has occurred on the high seas lie under the general maritime law, has produced conflicting answers. *Cf., Public Administrator v. Angela Compania Naviera, S.A.*, 592 F. 2d 58, 63 (2 Cir. 1979); *Renner v. Rockwell International Corp.*, 587 F. 2d 1030, 1031 (9 Cir. 1978).

(b) Should prejudgment interest be added to an award for pecuniary loss in a wrongful death action brought under the general maritime law.

I.

The holding of this Court in *Mobil Oil v. Higginbotham* should not be applied to a death action under the general maritime law where the negligence of the defendant occurred on land or in territorial waters as well as on the high seas.

The Death on the High Seas Act governs the death of a person caused by wrongful act, neglect, or default occurring on the high seas beyond a marine league from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States. 46 U.S.C. §761:

> "The recovery . . . shall be fair and just compensation for the pecuniary loss sustained by the persons for whose benefit the suit is brought. . . ." 46 U.S.C. §762.

The petitioners urge that the limiting provisions of DOHSA are not applicable to this case.

Until *The Harrisburg*, 119 U.S. 199, was overruled by this Court in *Moragne v. States Marine Lines, Inc.*, 397 U.S. 375, 1970 A.M.C. 967, no remedy for wrongful death on the high seas was recognized in the absence of an applicable state or federal statute. In overruling *The Harrisburg*, the Court in *Moragne* held that a remedy lies under the general maritime law for death caused by violation of maritime duties. The Court in *Moragne* did not restrict its determination to a state's territorial waters.

In *Sea-Land Service, Inc. v. Gaudet,* 414 U.S. 573, 1973 A.M.C. 2572 the Court set forth the measure of damages in a maritime death action, writing:

> "Our review of those authorities, and the policies of maritime law, persuade us that, under the maritime wrongful death remedy, the members of the decedent's dependents may recover damages for their loss of support, services, and society as well as funeral expenses." (414 U.S. 584).

Limiting *Gaudet* to coastal waters, this Court in *Higginbotham* wrote:

> "There is a basic difference between filling a gap left by Congress's silence and rewriting rules that Congress has affirmatively and specifically enacted. In the area covered by the statutes (DOHSA), it would be no more appropriate to prescribe a different measure of damages than to prescribe a different statute of limitations, or a different class of beneficiaries." (436 U.S. 618, 625).

Having overruled *The Harrisburg* and finding the general maritime law includes an action for death caused by a violation of maritime duties, this Court would allow the survivors to recover compensation for loss of support and services, funeral expenses and for loss of society were it not for the limiting provisions of DOHSA.

The effect of the judicial overruling in *The Harrisburg* is retrospective as well as prospective. *People of State of California v. Italian Motorship Ilice,* 534 F. 2d 836, 840 (9 Cir. 1976). In 1920, therefore, when DOHSA was enacted the general maritime

law afforded a remedy for wrongful death and the recovery included the elements of damage set forth in *Gaudet.*

The maritime law is the common law of seafaring men. *United States v. Webb, Inc.,* 397 U.S. 179, 191. DOHSA, a statute in derogation of the survivors' rights to recover for loss of society, should be strictly contrued. 82 C.J.S. §393.

By its terms, DOHSA, applies to the death of a person caused by wrongful act, neglect or default *occurring on the high seas.* 46 U.S.C. §761 (emphasis supplied).

The jury found the respondent negligent in its purchase, overhaul and maintenance of the vessel and in its selection and supervision of her captain and crew as well as in its operations of the vessel at sea. Since the jury determined that the decedent's death was caused by wrongful acts, neglect or default which occurred on land or in territorial waters as well as on the high seas the Morgans should be awarded the full damages allowed by the general maritime law in a death case. They should not be limited in their recovery by the provisions of DOHSA (46 U.S.C. §762).

This Court was presented a similar question in *Richards v. United States,* 369 U.S. 1 (1961), when it considered a conflict-of-laws problem arising under the Federal Tort Claims Act [28 U.S.C. §1346(b)]. The critical words of the act, "where the act or omission occurred" were held to mean the place where the acts of negligence took place.

The following passage from this Court's opinion in *Richards* at pages 9-10 sets forth the petitioners' argument with regard to the effect of DOHSA on their recovery under the General Maritime Law:

> "In the Tort Claims Act, Congress has expressly stated that the Government's liability is to be determined by the application of a particular law, the law of the place where the act or omission occurred,[19] and we must, of course, start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used. We believe that it would be difficult to conceive of any more precise language Congress could have used to command application of the law of the place where the negligence occurred than the words it did employ in the Tort Claims Act. Thus we first reject the alternative urged by American Airlines. The legislative materials cited to us by American[20] not only lack probative force in a judicial sense, but they are completely unpersuasive to support the argument that Congress intended the words 'act or omission' to refer to the place where the negligence had its operative effect. The ease of application inherent in the rule urged by American lends a certain attractiveness, but we are bound to operate within the framework of the words chosen by Congress and not to question the wisdom of the latter in the process of construction. We conclude that Congress has, in the Tort Claims Act, enacted a rule which requires federal courts, in multistate tort actions, to look in the first instance to the law of the place where the acts of negligence took place."

Further support for the argument of the petitioners is to be found in *Hartsfield v. Seafarers International Union, etc.*, 427 F. Supp. 264 (S.D. Alabama, 1977) and in *Lowe v. Trans World Airlines, Inc.*, 396 F. Supp. 9, 11 (S.D.N.Y. 1975) where it was stated:

> "It is certainly not patent that the happening of a disaster in a place on the high seas, regardless of the actions and other causes from which it followed, decisively attracts DOHSA."

Global's negligence in its purchase, overhaul and maintenance of the Lady Margaret and its negligence in its selection and supervision of her captain and crew did not occur on the high seas. A strict construction of DOHSA, close adherence to the literal or textual interpretation thereof, requires that this case be excluded from its operation. 82 C.J.S. §10 p. 529.

The fact that the jury also found that Global was negligent in its operation of the vessel at sea should not vary this conclusion as shown by the holding in *Smith v. Ithaca Corp.*, 612 F. 2d 215 (1980). In *Smith,* the Court of Appeals for the Fifth Circuit considered whether or not the trial court properly awarded damages for loss of society to the widow of a seaman who died two days after being discharged from the crew of the defendant's vessel, a tanker which plied United States coastal waters carrying benzene and other petroleum products. The district court found the seaman's exposure to benzene fumes directly resulted in his eventual demise.

In affirming the trial court's determination, the appellate court noted that it was impossible to determine from the record where the decedent's injury occurred, while the vessel was discharging or loading benzene at ports in territorial waters or while the vessel cruised the high seas. The appellate court held it would be illogical and unfair to deny recovery of damages for loss of society because the decedent's fatal indivisible injury was inflicted only partially in coastal waters.

The jury's award for loss of society should be reinstated.

The foregoing argument is also applicable to the jury's award to Mrs. Morgan for her mental pain resulting from her presence during the drowning of her son.

The trial judge, relying on *Higginbotham,* set aside the jury's award to Mrs. Morgan for her mental pain resulting from her presence during the drowning of her son.

The law of the State of Michigan, the state of incorporation of Global, allows a recovery by a parent for the emotional distress generated by witnessing the negligent infliction of injuries upon her child. *Toms v. McConnell,* 207 N.W. 2d 140, 45 Mich. App. 647. The law of the State of New York, the domicile of the petitioners and their son, allows a recovery for the emotional distress generated by witnessing the negligent infliction of injuries upon a child to a parent who is a participant in the occurrence. *Shanahan v. Orenstein,* 52 A.D. 2d 164 (1st Dept.), *appeal dismissed,* 40 N.Y. 2d 985 (1976).

An award for this element of damage was made in a limitation proceeding by the District Court for the Southern District of Georgia in *Complaint of Farrell Lines Incorporated,* 389 F. Supp. 194, 202-203.

Mrs. Morgan's claim for emotional disturbance would lie if her son had survived. *Restatement, Second, Torts* §436(3). It was not her son's death which imposed this liability upon Global. Global was found liable to Mrs. Morgan for subjecting her to the fright and shock brought on by her knowledge that her son's life was in peril.

Neither DOHSA nor *Higginbotham* bear upon Mrs. Morgan's right to an award from Global for her mental pain, her shock and fright, resulting from her fear during this ordeal for the safety of her son.

II.

Prejudgment interest should be added to an award for pecuniary loss made in a wrongful death action under the general maritime law.

After the jury returned its verdict the petitioners moved for an order to include interest on the amount awarded for the pecuniary loss which they sustained by reason of the death of their son.

The trial judge denied the motion deciding that an award of prejudgment interest was discretionary and that it should not be awarded in this case.

The Court in *Moragne v. States Marine Lines, Inc.*, 398 U.S. 375, 408 points to the Death on the High Seas Act and the numerous state wrongful-death acts for guidance in resolving the issue of damages to be awarded in a death action brought under the general maritime law. No reference is made to prejudgment interest in *Sea-Land Service, Inc. v. Gaudet*, 414 U.S. 573.

The New York State Wrongful Death Act provides that interest upon the principal sum recovered from the date of the decedent's death shall be added to and be a part of the total sum awarded. EPTL §5-4.1.

In Michigan judgments bear interest from the date of filing the complaint at six percent. MCLA §600. 6013; MSA §27A. 6013.

The Court of Appeals for the Seventh Circuit considered the propriety of adding interest to a wrongful death award in an action brought under the general maritime law in *The First National Bank of Chicago v. Material Service Corporation*, 597

F. 2d 1110 (1979). Commenting that the interest rule under DOHSA is generally described as within the discretion of the district court, the court referred to the Fifth Circuit decision in *National Airlines, Inc. v. Stiles,* 268 F. 2d 400, 405-406 as suggesting a limited scope of discretion.

The trial judge instructed the jury to consider that their award to the petitioners would be in a lump sum rather than over the course of their lifetime. Since the jury was instructed to discount its award the petitioners will not receive full value for their pecuniary loss unless interest is added for the period from the date of death to the date of entry of judgment.

CONCLUSION

For the reasons set forth above, the petition should be granted.

Respectfully submitted,

JOHN H. REILLY, JR.
DICKERSON, REILLY
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Attorneys for Petitioners

APPENDIX

STATEMENT OF THE UNITED STATES COURT OF APPEALS DATED OCTOBER 31, 1980

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 31st day of October, one thousand nine hundred and eighty.

Present:

HONORABLE WILFRED FEINBERG
Chief Judge

HONORABLE ELLSWORTH A. VAN GRAAFEILAND
Circuit Judge

HONORABLE JAMES S. HOLDEN*
District Judge

N.B. Since this statement does not constitute a formal opinion of this court and is not uniformly available to all parties, it shall not be reported, cited or otherwise used in unrelated cases before this or any other court.

---

* Chief United States District Judge for the District of Vermont, sitting by designation.

Statement

DOROTHY J. MORGAN, individually and GEORGE J. MORGAN and DOROTHY J. MORGAN, as Administrators of the Estate of Thomas Edwin Morgan, Deceased,

Plaintiffs-Appellants-
Cross-Appellees,

-against-

GLOBAL COMMUNICATIONS, INC.,

Defendant-Appellee-
Cross-Appellant.

80-7400

Appeal and cross-appeal from the United States District Court for the Eastern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Eastern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged and decreed that the appeals from the judgment of said District Court be and they hereby are disposed of as set forth below:

The appeal and cross-appeal in this case grow out of the sinking of a 103-foot houseboat, owned by defendant Global Communications, Inc., in heavy seas eight miles off the North Carolina coast. In that tragic occurrence, Thomas Edwin Morgan, a guest on board, was swept overboard and drowned;

Statement

Dorothy J. Morgan, also a guest and the mother of Thomas, remained in the water five hours clinging to the side of a life raft before she was rescued by the Coast Guard.

George J. Morgan and Dorothy J. Morgan, parents of Thomas and administrators of Thomas's estate, and Dorothy J. Morgan, individually, sought damages for the wrongful death of their son, for their son's pain and suffering and for Mrs. Morgan's own injuries.

After a jury trial before Jack B. Weinstein, Chief Judge, in the United States District Court for the Eastern District of New York, Global was found liable; in a two-phase verdict, the jury awarded plaintiffs damages totaling $750,000 for the injuries suffered. Thereafter, the court set aside $250,000 of that award, thus granting in part Global's motion to set aside the entire award.

Plaintiff Mrs. Morgan, individually, and both plaintiff parents as administrators of Thomas's estate appeal from the rulings that reduced the total award from $750,000 to $500,000 and from denial of prejudgment interest. Defendant Global cross appeals from the judge's refusal to set aside the remaining award of $500,000.

Turning to the appeal of plaintiffs, the awards set aside were those that compensated the Morgans $200,000 for loss of Thomas's society and Mrs. Morgan $50,000 for mental anguish by being present when her son drowned. We find no error in the court's ruling. The Supreme Court has limited recovery under the Death on the High Seas Act (DOHSA), 46 U.S.C. §761 et seq., for wrongful death to pecuniary loss only. Mobil Oil Corp. v. Higginbotham, 436 U.S. 618 (1978). Under the circumstances

here, the district judge correctly concluded that the limitations of DOHSA applied. Further, assuming arguendo that the judge had discretion to grant prejudgment interest on the pecuniary award, denying such interest was not an abuse of discretion because of the size of the verdict and the fact that economic loss would have occurred, if at all, at some future time as the judge pointed out.

Global cross appeals from the court's refusal to set aside as excessive the remaining awards under DOHSA of $200,000 to the parents for their pecuniary loss, and two awards under the general maritime law: $250,000 to Mrs. Morgan for her pain and suffering and $50,000 to the Morgans for Thomas's pain and suffering.

The jury's award of $200,000 under DOHSA for pecuniary loss sustained by Thomas's parents is not supported by the record. Thomas was 27-years old at the time of his death. He suffered from cerebral palsy, which substantially impaired his neurological and motor functions. He had never been employed, had no record of earnings and had contributed nothing to his own support or to that of his parents. Thomas's assistance with household chores and his potential to earn a living at some future time are insufficient to support so high an award.

Similarly, the award to Mrs. Morgan of $250,000 for her own pain and suffering under the general maritime law is not sufficiently supported by the record. We do not doubt that Mrs. Morgan suffered during her five-hour ordeal in the sea but her physical injuries were minor and temporary. Further, she failed to provide medical testimony to support her contention of continuing psychological trauma. Accordingly, we believe that the court erred in not setting aside these awards as excessive.

Statement

We find no merit to Global's other claims, which we have examined with care.

The judgment is affirmed to the extent that it sets aside the award under DOHSA to the Morgans of $200,000 for loss of society and $50,000 to Mrs. Morgan for mental anguish, denies the Morgans' motion for prejudgment interest and denies Global's motion to set aside the award of $50,000 for Thomas's pain and suffering. The judgment is reversed and Global is entitled to a new trial on the issue of damages with regard to the awards of $200,000 to the Morgans for pecuniary loss under DOHSA and $250,000 for Mrs. Morgan's pain and suffering. However, to save the plaintiffs the expense, discomfort and risk of a new trial, we will withhold entry of judgment for thirty days within which time the plaintiffs may, if they choose, file with this court a certified copy of a remittitur filed in the district court of $100,000 on the award to the Morgans under DOHSA and $100,000 on the award to Mrs. Morgan. If such filing is timely made, the judgment of the district court, less the amount remitted, will be affirmed; absent such filing within thirty days, the judgment will be reversed and a new trial ordered on these issues consistent with this order. See Dullard v. Berkely Associates Company, 606 F.2d 890, 896 (2d Cir. 1979).

s/ Wilfred Feinberg
WILFRED FEINBERG, Chief Judge

s/ Ellsworth A. Van Graafeiland
ELLSWORTH A. VAN GRAAFEILAND
Circuit Judge

s/ James S. Holden
JAMES S. HOLDEN, District Judge